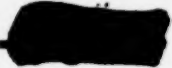


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ALEXANDER L. STEVAS,
CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1983

**In the Matter of the Liquidation
of Kenilworth Insurance Company**

**The Honorable Philip R. O'Connor, Director of
Insurance of the State of Illinois and Court-appointed
Liquidator of the Kenilworth Insurance Company**

Petitioner

Versus

Organ and Company, Inc.

Respondent

**Petition for Writ of Certiorari to
the Louisiana State Supreme Court**

**Brief in Opposition to Petition for Writ of Certiorari
to the Louisiana State Supreme Court**

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Respondent-Appellee**

CERTIFICATE OF INTERESTED PERSONS

Parties:

Kenilworth Insurance Company, an Illinois Stock,
Property and Casualty Company, In Liquidation

The Honorable Philip R. O'Connor, Director of In-
surance of the State of Illinois and Court-appointed Li-
quidator of the Kenilworth Insurance Company

Organ and Company, Inc.

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STATEMENT OF THE CASE

The Kenilworth Insurance Company had appointed Organ and Company, Inc. as a managing general agent to procure, write and manage certain insurance business in the State of Louisiana. For convenience, Organ and Company opened a bank account in Louisiana in the name of Kenilworth Insurance Company. Organ and Company was the only person authorized to sign this account and funds in said account were the property of Organ and Company.

Without any service or citation or other notice to Organ and Company, Inc., the Director of Insurance for the State of Illinois appeared in Louisiana and filed an Illinois judgment and seized the aforesaid bank account.

Organ and Company obtained preliminary and ultimately a temporary injunction prohibiting the Sheriff of the Parish of Jefferson, State of Louisiana from forwarding said funds to the State of Illinois.

Testimony taken at the time of the respective injunction hearing clearly showed that Organ and Company was the owner of these funds and that they maintained the account in the name of Kenilworth to facilitate the placement and management of insurance business in the State of Louisiana. It clearly and uncontestedly established that the funds were the property of Organ and Company.

The testimony at this trial clearly established that Organ and Company, Inc. was never served with process in the Illinois or the Louisiana proceedings.

Petitioner-Appellant herein relies upon the case of *Underwriters National Assurance Company v. North Carolina Life and Accident and Health Insurance Guaranty Association, et al*, 102 S.Ct. 1357, 455 U.S. 691, 71 L.Ed.2d 558 (1982).

It is submitted by respondent that said case is authority for the position taken by Organ and Company herein and authority for the judgments rendered by the various Courts of the State of Louisiana in this matter.

In the syllabus of the aforesaid case, cited on page 562 thereof, it is stated:

"Under the Full Faith and Credit clause, a judgment of a Court in the State, is conclusive upon the merits in another State, only if the Court in the first State had power to pass on the merits—that is, had jurisdiction over the subject matter and the relevant parties."

The holding by the Supreme Court of the United States in the *Underwriters* case (supra) clearly showed that the North Carolina Association had appeared in a rehabilitation Court in another State and fully litigated ownership of the particular funds involved. After losing in the other State, they then came back in the North Carolina Courts and attempted to relitigate the issue. The Supreme Court of the United States rightfully held that *res judicata* applied since the matter had been properly litigated in one State and under the Full Faith and Credit clause that judgment was required to be respected in the other State.

The record herein conclusively showed that there was no jurisdiction attempted to be or actually exercised in Illinois over Organ and Company, Inc. nor was there any jurisdiction over the Illinois Court over a deposit physically located in the State of Louisiana.

There is no law existing which requires a Louisiana citizen with property in Louisiana to proceed to Illinois to litigate his right to maintain possession thereof.

It is respectfully submitted on behalf of respondent-appellee herein that petitioner-appellant request for a writ of certiorari directed to the Louisiana State Supreme Court should be denied.

Respectfully submitted,

Felicien P. Lozes

CERTIFICATE OF SERVICE

This is to certify that the undersigned is a member in good standing of the Bar of the Supreme Court of the United States of America, and that copies of the Brief in Opposition to Petition for Writ of Certiorari have been served upon opposing counsel, Sidney M. Bach, Esq., by placing copies of the Brief in Opposition in the United States Mail, properly addressed and postage prepaid.

New Orleans, Louisiana, this 21st day of August, 1983.

Respectfully submitted:

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